

Appl. No. : 10/827,192
Filed : April 16, 2004

REMARKS

Claims 1-33 are unchanged. Claims 1-33 are pending in the application. Reconsideration and allowance of the claims in light of the present remarks is respectfully requested.

Discussion of the Double Patenting Rejection

Claims 14-22 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 24-31 of U.S. Patent No. 6,071,236. In response, Applicant provides herewith a terminal disclaimer according to 37 C.F.R. 1.321(c) to obviate the double patenting rejection over the prior patent.

Discussion of the Rejection Under 35 U.S.C. § 103(a)

Claims 1-13 have been rejected under 35 U.S.C. § 103(a) as being obvious over Altman (U.S. Patent No. 5,572,421 in view of Brill (U.S. Patent No. 5,445,324).

The Altman patent is directed to a portable medical questionnaire presentation device. Applicant recites “automatically comparing the answer to a corresponding prestored expected answer; automatically ascribing a score to a result of the comparison” in Claim 1. The Office Action cites Altman at column 16, lines 16-26 where the following is described: “...calculating a weighted numerical value based on the answers. The value may indicate, for example, a numerical evaluation of the patient’s general health...”. Applicant, however, automatically compares each answer to a corresponding prestored expected answer and then automatically ascribes a score to the result of the comparison. Moreover, the Office Action states that Altman does not teach “automatically comparing the score to a predetermined threshold value so as to determine a mental status of the patient” as recited in Applicant’s Claim 1.

The Brill patent is directed to an apparatus for measuring psychotherapy outcomes. The Brill patent does not disclose “automatically comparing the score to a predetermined threshold value so as to determine a mental status of the patient”. The citations listed in the Office Action at column 7, lines 28-37 and column 8, lines 14-17 do not describe automatically comparing the score to a predetermined threshold value. Brill describes needing to track psychological measures

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over multiple sessions so as to compare with benchmarks. However, the results of testing are charted and displayed such that a professional clinician can analyze and act on the results.

Furthermore, Applicant's method and system has a different goal, which is to determine if the patient is lucid enough to answer medical diagnostic questions, and not in measuring psychotherapy outcomes. The patent specification at page 71 describes the mental status examination as "a series of questions used to assess the patient's orientation that allows the system 100 to determine the patient's ability to respond to questions and to follow advice". In a subsequent sentence, "the caller's (patient's) ability to understand or respond to questions" is also mentioned. Therefore, it is seen that mental status does not have anything to do with psychotherapy, "individual psychological variables" and "overall psychological indices". Brill assumes that the patient is able to take a test, and therefore does not check the patient's mental status.

In Brill, there is a need for a clinician to be involved in the testing. For instance, page 27 of 33 of Appendix B indicates subjective questions completed by a clinician. Thus, Brill presupposes that a clinician is involved in the testing, and the testing is not and cannot be automatic. Furthermore, there is no motivation for Altman to add in a mental status test. This is because the Altman device is used in a medical setting where medical staff would observe a patient using the presentation device and would notice an unstable mental status. Therefore, there is no need for a mental status test.

The discussion for Claim 1 above also applies to Claims 10 and 12 as well. Neither Altman nor Brill disclose a "means for automatically comparing the score to a predetermined threshold value so as to determine a mental status of the patient" as recited in Claim 10. Neither Altman nor Brill disclose "a software program executed on the computing device and configured to ... automatically compare the score to a predetermined threshold value so as to determine a mental status of the patient."

Dependent Claims 5, 11 and 13 describe actions or means dependent on the comparison with the predetermined threshold value. Claim 5 describes an action if the threshold value is

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achieved, and Claims 11 and 13 describe means for an action if the threshold is not achieved. Neither Brill nor Altman show any such feature.

Dependent Claims

Claims 2-9, 11 and 13 are dependent on the above-discussed independent Claims 1, 10 and 12, respectively. Applicant respectfully submits that pursuant to 35 U.S.C. § 112, ¶4, the dependent claims incorporate by reference all the limitations of the claim to which they refer and include their own patentable features, and are therefore in condition for allowance. Therefore, Applicant respectfully requests the withdrawal of all claim rejections and prompt allowance of the claims.

Allowed Claims

Claims 23-33 are allowed as stated in the Office Action dated July 15, 2005.

CONCLUSION

Because of the reasons presented above, the combination of the Altman and Brill references do not teach or suggest each and every element of Applicant's independent claims. Since it is respectfully submitted that the rejections have been overcome, Applicant respectfully requests allowance of all claims.

In light of the above amendments and remarks, reconsideration and withdrawal of the outstanding rejections are specifically requested. Applicant respectfully submits that the claims of the above-identified application are in condition for allowance. However, if the Examiner finds any impediment to allowing all claims that can be resolved by telephone, the Examiner is respectfully requested to call the undersigned.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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